

ORIGINAL

PRESIDING OFFICER'S
RULING NO. MC98-1/10

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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Mailing Online Service

Docket No. MC98-1

PRESIDING OFFICER'S RULING
ESTABLISHING THE PROCEDURAL SCHEDULE
FOR CONSIDERATION OF THE PROPOSED
MAILING ONLINE EXPERIMENT

(October 14, 1998)

This docket was established to consider two Postal Service requests for recommended decisions concerning a new Mailing Online service. On October 7, 1998, the Commission transmitted an Opinion and Recommended Decision on the proposed market test of Mailing Online to the Governors of the Postal Service. The Commission found the proposed market test would generate information likely to be useful in consideration of the proposed experiment, and therefore recommended that the market test be undertaken. The next phase of this case will involve review of the proposal for the two-year nationwide experiment.

During hearings on the market test, participants were requested to submit suggestions for scheduling. Suggestions were filed by the Postal Service, Pitney Bowes, and the Office of the Consumer Advocate (OCA).¹ Prior to discussing specific procedural events, I will briefly state my view of the relevance of the fact that the Postal Service filed its request pursuant to section 67 of the Commission Rules of Practice.

¹ The Postal Service requested a brief extension of the date for submitting comments. Pitney Bowes and OCA filed comments as responses to the Postal Service submission. I will accept all three documents.



Over time, the Commission has responded to suggestions that it would be useful to have procedures for the expeditious consideration of tests of new postal services. The Commission first adopted section 67 for the consideration of experiments, and subsequently added procedures for evaluating provisional service changes and market tests. Each of these sets of rules was developed to allow for maximum expedition consistent with due process.

In Docket MC98-1 the Commission is considering two proposals combined by the Postal Service into a single Request. Order No. 1217 determined to bifurcate the case, and consider the proposed three-month local market test and the proposed two-year nationwide experiment separately. That order stated, at 9, that:

If the proposed market test and the proposed experiment are considered concurrently, it will be a challenge to litigate them in the short period required by the Commission's rules without violating the parties due process rights. A more reasonable procedure is to defer evaluation of the nationwide experiment. If the schedule for decision set out in rule 67 is inadequate, more time can be used to consider the Postal Service request.

The comments proposing procedural schedules for consideration of the proposed experiment make it clear that the conflict foreseen by the Commission has indeed come to pass. The Postal Service suggests a procedural schedule that involves hearings on its direct case on October 20-21, rebuttal testimony from participants filed October 26, and briefing to be concluded in November. This schedule would allow for the Commission to issue a recommended decision within 150 days of the Postal Service Request.

Pitney Bowes contends that the schedule proposed by the Service would deny due process, and that the 150-day period provided for in section 67(d) of the Rules of Practice should begin on January 15, 1999, the date the three-month market test is currently scheduled to be complete. Pitney Bowes thus suggests hearings on the Postal Service direct case in late February and early March, and written briefs in May. Its argument is premised primarily on the Postal Service request for a market test as

part of its request for a Mailing Online experiment. Pitney Bowes points out that the Postal Service schedule would preclude participants from utilizing any intelligence gained from the market test in their testimony.

This is the first case in which the Postal Service has sought authority to conduct a market test. Although the Rules of Practice contemplate a market test designed to develop information necessary to support a request for permanent authority, the Postal Service requested a waiver to allow a market test to precede its request for experimental authority. The process of incrementally increasing the scope of a new service (operations test, market test, experiment, permanent authority) was considered sound and reasonable by the Commission, and the requested waiver was granted. Inherent in the Postal Service request, and the Commission's approval of that request, was the understanding that information developed during the market test would be useful for framing the nationwide experiment. The reason for focusing on the market test first, and deferring consideration of the experiment, was that the market test might provide information that would help the Commission to reach the best possible recommendation on the proposed Mailing Online experiment.

Now that the Commission has completed its evaluation of the proposed market test, it is time to turn to consideration of the proposed experiment. The schedule suggested by the Postal Service is flawed because it would essentially prevent participants and the Commission from having access to meaningful data from the market test. Even assuming the market test begins immediately, initial usage may not be representative, and no cost data (which is to be reported by accounting period) will be available prior to the close of the evidentiary record.

The alternative schedule offered by Pitney Bowes allows for incorporation of information from the market test, but it appears to extend the schedule more than necessary. Pitney Bowes proposes that participants submit statements of issues as provided for in rule 67a(b), on January 15, 1999, three months after the hoped for start date of the market test. It suggests a 150-day proceeding starting from that date. Participants were directed to submit statements of issues for the purpose of narrowing

issues when the Commission issued the initial notice of the Postal Service Request. Several participants filed statements of issues and no steps to narrow the scope of the inquiry have been deemed necessary. The Postal Service direct evidence has been available since July 15, 1998, and discovery has been taking place. While the market test may provide significant relevant information, the Postal Service is neither obligated nor expected to completely revise its direct case. That being so, there is no reason for delaying hearings until the end of February.

Both the Postal Service and Pitney Bowes seem focused on meeting the 150-day standard set forth in rule 67d. This focus may be counter-productive. The rule indicates the Commission intention to act with maximum expedition, so long as action is "consistent with procedural fairness." In this case, acting without benefit of information developed in the market test would not be consistent with procedural fairness, however, allowing for the market test to run its course before participants begin to litigate the proposed nationwide experiment would not be considering the Service's Request with appropriate expedition.

A procedural schedule for evaluating the proposed nationwide experiment is set out on Attachment A to this ruling. Several aspects of this schedule are unusual, due to the unusual nature of this case. If, as the case goes on, adjustments appear necessary, changes can be made.

Discovery on the Postal Service direct case will end on November 6, 1998. Hearings for cross-examination of the Postal Service testimony will take place on November 18-20.

Participant rebuttal to the Postal Service will be due on December 4, 1998. While only a limited amount of data from the market test will be available by this time, evidence rebutting the Postal Service presentation on issues such as rate design, potential competition, technical feasibility, and contribution to institutional costs can be prepared notwithstanding the ongoing market test. Discovery on OCA and intervenor direct cases will be allowed through December 23, 1998. Responses to discovery submitted between December 4 and December 16 will be due in 7 days, while

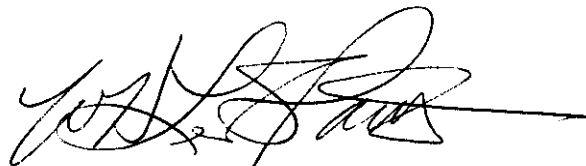
responses to discovery submitted between December 17 and December 23 may be filed within 14 days. This will put a premium on filing discovery requests quickly, and will allow witnesses additional time to prepare responses during the holiday period. Hearings for the receipt of initial participant testimony will take place January 11-13, 1999.

The schedule also includes a date for filing testimony based on market test data. Both the Postal Service and other participants may wish to submit supplementary evidence utilizing the periodic reports on the market test provided by the Postal Service. See PRC Op. MC98-1 at 51. This supplementary evidence may take the form of revised or expanded testimony, or it may present new analyses, however, only presentations dependent on market test results should be offered at this time. Supplementary evidence will be due on or before January 27, 1999. Hearings for the receipt of supplementary testimony will be held February 3-5. Postal Service surrebuttal to participant evidence filed in December will also be due on January 27, and heard February 3-5. If necessary, hearings will be extended to February 9-10.

The schedule does not provide a specific date for filing rebuttal to the supplementary evidence using market test data. Any participant seeking the opportunity to present such evidence, must file a written motion on or before February 4, 1999.

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The procedural schedule for consideration of the Postal Service Request for authority to conduct a Mailing Online experiment is set out as Attachment A.

A handwritten signature in black ink, appearing to read 'W.H. LeBlanc III', with a long horizontal flourish extending to the right.

W.H. "Trey" LeBlanc III
Presiding Officer

HEARING SCHEDULE
MAILING ONLINE SERVICE
Docket No. MC98-1

November 6, 1998	Completion of discovery on the Postal Service's direct case
November 9, 1998	Identify expected amount of oral cross-examination. Report on the availability of witnesses
November 18-20, 1998	Hearings for cross-examination of the Postal Service's direct case (9:30 a.m. in the Commission hearing room)
December 4, 1998	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
December 21, 1998	Identify expected amount of oral cross-examination. Report on the availability of witnesses
December 23, 1998	Completion of discovery directed to intervenors and the OCA
January 11-13, 1999	Evidentiary hearings on the cases-in-chief of intervenors and the OCA
January 19, 1999	Completion of discovery directed to the Service
January 27, 1999	Filing of evidence based on market test data and in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on this evidence; only oral cross-examination)
February 3-5 and 9-10, 1999	Hearings on evidence based on market test data and in rebuttal to participants' direct evidence
February 18, 1999	Initial Briefs
February 25, 1999	Reply Briefs
